BAIL — LIABILITY TO ANSWER CHARGES NOT NAMED IN BAIL BOND. — The plaintiff as surety entered into a recognizance with a party committed for trial on a charge of indecent assault. The condition of the bond was that the accused should appear and plead "to such indictment as may be found against him by the grand jury for and in respect to the charge aforesaid . . . and should not depart the court without leave." An indictment for rape was returned by the grand jury. The accused failed to appear. The plaintiff moved to set aside an order authorizing the estreat of the recognizance. *Held*, that the motion be dismissed. *The King* v. *Mandacos*, 50 D. L. R. 427 (Nova Scotia).

Some courts consider the bail bound only when an indictment is returned charging the crime named in the recognizance. *Queen* v. *Wheeler*, 1 CAN. L. JOUR. (N. S.) 272; *Queen* v. *Ritchie*, 1 CAN. L. JOUR. (N. S.) 272. Others regard the recognizance as effecting a substitution of the bail for the jailer, and hold him, although the indictment be based on a different act from that underlying the recognizance. *Pernitti* v. *People*, 99 App. Div. 391, 91 N. Y. Supp. 210. See 18 HARV. L. REV. 539. A sound intermediate rule prevails, however. This rightly accords independent effect to the undertaking that the accused shall not depart the court without leave, but confines its application to appearances in proceedings connected with the criminal act for which he was committed. Thus, though no indictment be returned, or a *nolle prosequi* be entered, the bail remains bound until the accused is formally discharged. *State* v. *Stout*, 11 N. J. L. 124; *Silvers* v. *State*, 59 N. J. L. 428, 37 Atl. 133. See also *State* v. *Hancock*, 54 N. J. L. 393, 24 Atl. 726. The crimes named in the recognizance and indictment must arise out of the same transaction, if the former is to continue effective. *State* v. *Brown*, 16 Iowa, 314; *Carson* v. *Brown*, 142 Ga. 667, 83 S. E. 523. But if, as in the instant case, the offenses are merely different degrees of the same crime, the bail remains bound though the indictment charges the graver crime. *State* v. *Bryant*, 55 Iowa, 451, 8 N. W. 303. See *Gresham* v. *State*, 48 Ala. 625, 627. *A fortiori*, where the indictment is for the lesser offense. *Campbell* v. *State*, 18 Ind. 375; *Comm.* v. *Teevens*, 143 Mass. 210, 9 N. E. 524.

BANKS AND BANKING — DEPOSITS — CREATION OF RELATION OF BANK AND DEPOSITOR. — The plaintiff by mistake sent funds to the defendant bank for deposit. There was no agreement between the plaintiff and the bank creating the relation of bank and depositor. Subsequently, the bank failed to honor the checks of the plaintiff. *Held*, that the bank is not liable. *Rimes & Stubbs* v. *National Bank of Savannah*, 101 S. E. 315 (Ga.).

A bank is under no general duty to receive funds offered for deposit. *Thatcher* v. *The Bank of the State of N. Y.*, 5 Sandf. (N. Y.) 121. See *Jaselli* v. *Riggs Nat. Bank*, 36 App. Cas. (D. C.) 159, 168; *Elliott* v. *Capital City State Bank*, 128 Iowa, 275, 277, 103 N. W. 777, 778. Similarly, the relation of bank and depositor cannot be created without the consent of the owner of the funds deposited. *Patek* v. *Patek*, 166 Mich. 446, 131 N. W. 1101. See *Winslow* v. *Harriman Iron Co.*, 42 S. W. (Tenn. Ch. App.) 698, 700. These propositions show clearly that the relation is essentially contractual in its nature. *Wilson* v. *First Nat. Bank*, 176 Mo. App. 73, 162 S. W. 1047; *First Nat. Bank of Allentown* v. *Williams*, 100 Pa. St. 123. See 1 MORSE, BANKS AND BANKING, 5 ed., § 178. Under the facts in the principal case, the existence of such a contract does not appear, for there is no evidence of assent by the bank. And in the absence of such a contract there is no duty to honor checks, for this is merely an incident of the relation of bank and depositor. *Citizen's Nat. Bank* v. *Importers & Traders Nat. Bank*, 119 N. Y. 195, 23 N. E. 540. See *National Mahaiwe Bank* v. *Peck*, 127 Mass. 298, 300. The only basis for liability on the part of the bank, in the absence of an express contract, would be such conduct

by it as to estop it to deny its assent to a contract of deposit. *Burnell* v. *San Francisco Savings Union*, 136 Cal. 499, 69 Pac. 144; *Van Allen* v. *The American Nat. Bank*, 52 N. Y. 1.

BANKRUPTCY — DISCHARGE — FAILURE TO OBTAIN DISCHARGE IN PRIOR PROCEEDING AS GROUND FOR REFUSAL OF DISCHARGE IN SUBSEQUENT VOLUNTARY PROCEEDINGS. — A bankrupt failed to apply for a discharge within the time fixed by statute after adjudication under a voluntary petition (BANKRUPTCY ACT OF 1898, § 14 *a*). After the expiration of that period he filed another voluntary petition and was adjudged bankrupt. A creditor whose debt was provable under both proceedings asked that his claim be excluded from the operation of any discharge that might be granted under an application therefor in the second proceeding. *Held*, that the relief be granted. *Monk* v. *Horn*, 44 Am. B. R. 472 (C. C. A.).

The Bankruptcy Act limits the time within which an application for discharge may be filed. (§ 14 *a*.) It also enumerates specific grounds for the refusal of a discharge. (§ 14 *b*.) It is settled law that failure to obtain a discharge, for either reason, precludes a bankrupt from procuring, in a subsequent voluntary proceeding, a discharge from debts provable in the earlier one. *In re Cooper*, 236 Fed. 298; *In re Loughran*, 218 Fed. 619; *In re Bacon*, 193 Fed. 34. The reason usually stated for the decisions is that the issue as to the right to discharge from those debts is *res judicata*. See *Siebert* v. *Dahlberg*, 218 Fed. 793, 794; *Kuntz* v. *Young*, 131 Fed. 719, 721; *In re Elby*, 157 Fed. 935, 936. See COLLIER ON BANKRUPTCY, 9 ed., 318–319. Where there has been a denial of discharge in the earlier proceeding this reasoning is sound. *In re Krall*, 196 Fed. 402; *In re Kuffler*, 155 Fed. 1018. But this theory would hardly apply to the other class of cases, where there has been no judicial determination upon the merits of the issue. See *Last Chance Min. Co.* v. *Tyler Min. Co.*, 157 U. S. 683, 691; *Foster* v. *Busteed*, 100 Mass. 409, 412. Here the true basis would seem to be that Congress intended by section 14 *a* to relieve creditors from the necessity of remaining prepared for an unreasonable length of time to prove the existence of grounds for the refusal of a discharge under section 14 *b*; and that this intent would be defeated and the latter provision practically nullified, if a bankrupt were allowed to evade the bar by instituting a second proceeding. This reasoning is set forth in several cases and is confirmed in the principal case. See *In re Cooper*, *supra*; *In re Loughran*, *supra*.

CONFLICT OF LAWS — LETTERS ROGATORY — SERVICE OF PROCESS UPON RESIDENT AT THE REQUEST OF A FOREIGN COURT. — A civil court of Mexico City issued letters rogatory to the federal court in New York requesting that service of summons be made upon a defendant, resident in New York, who was being sued in Mexico upon a contract there made and to be performed. The defendant had no property in Mexico and had not been personally served. A Mexican statute gave the court jurisdiction to render a personal judgment, despite non-residence, where the obligation sued upon was to be performed within the territorial jurisdiction. *Held*, that the request be refused. *In re Letters Rogatory*, 261 Fed. 652 (Dist. Ct., S. D., N. Y.).

Under the civil law, courts have long made use of letters rogatory to accomplish judicial acts in foreign jurisdictions. 1 FOELIX, DROIT INTERNATIONAL, 4 ed., §§ 202, 239 *et seq.*; 5 WEISS, DROIT INTERNATIONALE PRIVÉ, 2 ed., 527. And the practice has been usual in courts of admiralty. HALL, ADMIRALTY PRACTICE, part 2, tit. 19, pp. 37–43. Some common-law courts consider this general power to issue and execute letters rogatory to be inherent to prevent failure of justice. *De Villeneuve* v. *Morning Journal Ass'n*, 206 Fed. 70. See *In re Pacific Ry. Commission*, 32 Fed. 241, 256. Others, however, view it as of entirely statutory origin. See *In re Letters Rogatory*, 36 Fed. 306; *Matter of Romero*, 56 Misc.